IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 108 OF 2006

WITH

CRIMINAL APPEAL NO. 431 OF 2006

CRIMINAL APPEAL NO. 108 OF 2006

Shankar Mahadeo Jadhav)
Age 28 years, Occupation)
Agriculturist, Residing of)
Hubalwadi, Islampur,)
Taluka walwa, District Sangli)
At present in Kolhapur Central)
Jail at Kolhapur.)..Appellant
(Orig.Accused No.1)

Versus

The State of Maharashtra)
through Karad Taluka)
Police Station,)
District Satara.)..Respondent
(Orig.complainant)

Mr. A.Q.Ansari, Advocate, for the appellant.
Mrs. M.M.Deshmukh, APP, for the State.

with

CRIMINAL APPEAL NO. 431 OF 2006

AATISH GANPATI SINGAN)
Convict Prisoner No.C/3533,)
Kolhapur Central Prison,)
Kalamba, Dist. Kolhapur.)..Appellant

Vs.

The State of Maharashtra)
Karad Taluka Police Station.)..Respondent

Mr. A.Q.Ansari, Advocate appointed, for the appellant.
Mrs. M.M.Deshmukh, APP, for the State.

CORAM: J.H.BHATIA,J.
DATE : 21st June, 2007.

JUDGMENT

1. These two Appeals are preferred by accused Nos. 1 and 2 who were convicted in Sessions Case No.1 of 2004 by the I Adhoc Additional Sessions Judge, Karad, for the offence punishable under Section 393 read with Section 398 of I.P.C. and were sentenced to undergo R.I. for seven years. Therefore, both these Appeals may be decided by the common judgment.

2. The prosecution case, in brief, is that on 23.10.2003 at about 2.00 a.m. in the night, P.W.2 Tanaji Karande, resident of Village Shalgaon, received a telephonic message from his brother Baliram resident of Karad, to the effect that he was not keeping well and, Tanaji was requested to come down to Karad immediately. Therefore, P.W.2 Tanaji and his friends - Dilip Karande, Vijay Karande and Shivaji Jadhav left for Karad on two motorcycles. When they reached near Chinchmala locality, they found that two persons were present on the western side of the road and one on the eastern side of the road. When they were proceeding ahead, something brushed to their foreheads and they immediately sensed that it could be a sort of road robbery. Therefore, instead of proceeding ahead, they immediately went to Ogalewadi Police Outpost. At that time, Police Inspector P.W.4 Panhalkar was present with staff. Incidentally, he had come to that side for the purpose of checking. P.W.2 Tanaji informed him and therefore, P.I. Panhalkar, his staff, Tanaji and others left for the spot. One constable was on the rear seat of the motorcycle of Tanaji while another constable Pujari was on the pillion seat of the motorcycle of Dilip Karande. P.I. Panhalkar and others were in in the jeep. When they reached near the aforesaid spot, they noticed that the person, who was present on the eastern side of the

road, had lifted some wire. Therefore, the drivers of the motorcycles stopped their vehicles. As soon as they stopped the vehicles, two persons standing on the western side of the road, moved ahead to approach the motorcycles. Constables Shinde and Pujari immediately apprehended both of them. The third person, who was on the eastern side of the road, ran away. Inspite of chase, they could not find him. Accused Nos. 1 and 2, who are appellants before this Court, are the said persons who were on the western side of the road and were apprehended by the police. As per the directions given by P.I. Panhalkar, one of the constables brought two panch witnesses and in presence of panch witnesses, personal search of both the accused was taken. During the personal search, an amount of Rs.80/- and a Gupti were found with accused No.1 Shankar. Similarly, a Gupti was found during the personal search of accused No.2 - Aatish. Both these weapons were seized under a panchnama. Both the accused persons were brought to the Karad Taluka Police Station where Police Inspector Panhalkar lodged a report and Crime No.99/2003 came to be registered. P.I. Panhalkar himself investigated the case and recorded statements of witnesses. During the investigation, it was revealed that the third person who had run away was Arun alias Ashok but he could not be apprehended. Therefore, charge-sheet was filed only against the present

appellants and the case was committed to the Court of Sessions. They were charged for the offence punishable under Section 393 read with Section 398 of I.P.C. The accused persons pleaded not guilty and were put to trial.

3. On behalf of prosecution, only four witnesses were examined and some documents were also placed on record. After hearing both the sides, the learned trial Court convicted both the accused and sentenced them as stated above.

4. Heard learned Counsel for the parties. Perused the record and proceedings and the impugned judgment. Mr. Ansari, learned Counsel for the appellants, vehemently contended that Panhalkar, who was himself the first informant has investigated the case and, therefore, the investigation is vitiated. He also contended that the first information about the incident was given by P.W.2 Tanaji at the Police Outpost, but that was not recorded and, therefore, the FIR Ex.38, lodged by P.I. Panhalkar cannot be looked into. He also contended that the finger prints on the weapons allegedly seized from the accused persons were not taken and, therefore, there is no reliable evidence to prove that the weapons were found in possession of the accused. He contended that police had falsely

implicated these accused persons at the behest of P.W.2 Tanaji and, therefore, the prosecution must fail and the accused are entitled to be acquitted.

5. On the other hand, Mrs. Deshmukh, learned APP supported the impugned order of conviction and sentence. According to her, there was no reason to disbelieve the evidence of prosecution witnesses.

6. P.W.2 - Tanaji deposed about the circumstances in which he had been to the spot of incident at about 2.00 a.m. or thereafter. According to him, on 23.10.2003, at about 2.00 a.m., he got telephonic message from his brother Baliram that he was not keeping well and therefore, Tanaji was requested to come down to Karad immediately. Therefore, he called his friends Dilip Karande, Vijay Karande and Shivaji Jadhav and all these four persons left Shalgaon for Karad on two motorcycles. Tanaji and Vijay were on one motorcycle, while Dilip and Shivaji were on the other. According to him, when they reached near Chinchmala locality, they noticed two persons on the western side of the road and one person on the eastern side of the road. When they were proceeding on motorcycles, something brushed againsttheir foreheads and, therefore, they immediately stopped and they felt that it was a sort of road robbery. Therefore, they rushed to the Ogalewadi Police

Outpost where P.W.4 Panhalkar was present. He informed the P.I. Panhalkar about the incident and immediately P.I. Panhalkar, his police staff, Tanaji and his companions went to that spot and in a few minutes they reached there. During that journey from the Police outpost to the spot of incident, constable Shinde was on the pillion seat of motorcycle of Tanaji, while constable Pujari was on the pillion seat of motorcycle of Dilip Karande. P.I. Panhalkar his staff and other members of the team were in the jeep. While proceeding towards the spot, lights of jeep were kept off. As per his evidence, when they reached near the spot, they noticed that the person present on the eastern side of the road had lifted some wire. On seeing it, they stopped the motorcycles immediately. As soon as the motorcycles were stopped, two persons standing on the western side of the road started approaching towards them. At that time, constable Shinde and constable Pujari apprehended both of them. The person, who was on the eastern side, fled away. The evidence of P.W.2 Tanaji is fully supported by P.W.3 constable Mansing Shinde and P.W.4 - P.I. Panhalkar. The evidence of all those three witnesses goes to show that after the accused persons were apprehended, P.I. Panhalkar asked Head Constable Jadhav to call two panch witnesses from Chinchmala and accordingly two persons were called and in their presence, personal search of both the accused

was taken. They deposed that a gupti and cash amount of Rs.80/- were recovered from the person of accused No.1 - Shankar and one gupti was recovered from accused No.2 - Aatish during the personal search and these articles were seized under a panchnama. The metal wire which was tied to small trees by the side of the road, was also seized.

7. P.W.1 - Shankar Dubal, who was a panch witness, has fully supported the prosecution. From the evidence of P.W.1 Shankar Dubal, it appears that the police party and the accused had reached near Chinchmala locality and the panch witnesses were called near the Chinchmala locality and in their presence personal search of both the accused was taken and the weapons were seized from them. However, he deposed that after the personal search, police party and panchas went to the spot of incident which was at a distance of about 1 km. from Chinchmala locality. They noticed that a wire was tied to the two trees on the opposite side of the road. On the eastern side, there was a tree called "Tarwad" and to the western side of the road, there was a tree called "Shiras". The wire was tied down to "Shiras" tree at about one foot above the ground level. The length of that wire was about 30 to 31 ft. Road was about 18 ft. wide anwd the trees were about 5 - 6 ft. away from the edges of the road.

8. There is some difference in the evidence of P.W.1 - Shankar Dubal, the panch witness, and the other three witnesses. According to P.W.1 Shankar Dubal, constable Jadhav had called him and another panch witness Hanumant Pawar near the Chinchmala locality and personal search of both the accused was taken and weapons were recovered from them. After seizure near the Chinchmala locality, the police party and the panchas went to the spot of incident which was at a distance of about 1 km. where wire was found tied to the two trees situated on the eastern and western side of the road. On the other hand, the evidence of P.I. Panhalkar, constable Shinde and Tanaji shows that the personal search was also taken at the actual spot of incident. In the examination-in-chief, P.W.1 Shankar admitted that he had gone through the contents of the panchnama and then he had signed. He also admitted that the contents of panchnama were correct. As his evidence is at variance with the contents of the panchnama and oral evidence of other three eye-witnesses and as he also admits that contents of the panchnama are correct, possibility of this variance due to lapse of memory on the part of P.W.1 Shankar cannot be ruled out.

9. It is noted that, according to the accused persons, they were not found at the spot of incident nor

any weapon was recovered from them. It was suggested on behalf of accused to P.I. Panhalkar that accused no.1 - Shankar had gone to Village Wagheri on 23.10.2003 at about 6 a.m. and he was apprehended at the Bus stop on suspicion. It was also suggested that accused No.2 - Aatish was apprehended at the S.T.Bus Stop, Ogalewadi at about 8.00 a.m. on 23.9.2003. Naturally, these suggestions were turned down by P.I. Panhalkar.

As stated earlier, according to the accused persons, they were arrested in the morning at about 8 or 8.30 a.m. However, all the prosecution witnesses maintained that both of them were arrested at about 3 a.m. The panchnama Exhibit 28 also reveals that it was recorded between 3.45 and 4.45 a.m. FIR Exhibit 38 was recorded at the police station and station diary entry Exhibit 7 was taken at 5.05 a.m. It shows that crime no.99/2003 pertaining to this offence was registered at the police station at 5.05 a.m. wherein all the details including the names, description, ages of the accused persons, the property recovered from them and the metal wire recovered at the spot were mentioned. If the accused persons would have been arrested in the morning, there could be some delay in recording of FIR and registration of evidence. Taking into consideration the time of panchnama, the time of recording of FIR and registration of offence, the plea of the accused that they were

apprehended on suspicion next morning at about 8 or 8.30 a.m. cannot be accepted. It is not the case of the accused that any of the prosecution witnesses, including police officers had any personal grudge or grievance against them due to which they could have falsely implicated the accused persons. Accused No.1 Shankar is the resident of Ogalewadi - Islampur, Taluka Walwa, District Sangli. Accused No.2 is the resident of Shinganwadi Kole, Taluka Karad, District Satara. None of them was the resident of Chinchmala or Wagheri or Shalgaon or Karad proper. Therefore, P.W.1 Shankar, P.W.2 Tanaji or the Police officer had no reason to falsely implicate the accused.

10. As per the evidence led by the prosecution, P.W.2 Tanaji and his friends were first to go to the spot of incident near Chinchmala and they all noticed three persons to the side of the road and had also noticed that some wire was tied to the trees and brushed them indicating that an attempt for robbery was being made. As per the evidence, immediately after that they went to Ogalewadi Police Outpost where P.I. Panhalkar was present and P.W.2 Tanaji informed him about that incident. If it is so, the information given by Tanaji was about a cognizable offence of attempt to commit robbery and the information given by him could be treated as first information report. Admittedly, that

report was not recorded anywhere. However, as per the evidence of P.W.4 - Panhalkar, after this incident, he went to the Police Station Karad and lodged the report Exhibit 38, on the basis of which the offence was registered. On behalf of the prosecution, it is explained that taking into consideration the circumstances, it was not expected from the police party to record the report of P.W.2 Tanaji because the police felt it necessary to rush to the spot to nab the culprits. Such road robberies are not uncommon and it becomes necessary for the police to prevent and detect such robbries. Further, it is contended on behalf of the prosecution that station diary is maintained only at the police station and not at the police outpost and, therefore, it was not possible to take down entry of the information given by Tanaji in the station diary before leaving for the spot of incident. There appears substance in this contention.

11. In view of the prompt action taken by P.W.2 Tanaji in going to the Police outpost and informing the police and then prompt action on the part of the police to rush to the spot and apprehending the accused provides corroboration to their testimony. There is no reason to disbelieve that gupties were recovered from the accused. If a case is based merely on circumstantial evidence, it could be contended that

taking of finger prints on the weapons was necessary. However, in the present case, there is a direct evidence of three witnesses about the incident and there is direct evidence of four witnesses about recovery of weapons from the accused. Therefore, merely because finger prints on the weapons were not taken, the prosecution witnesses cannot be thrown away.

12. Taking into consideration the evidence on record, I am satisfied that the prosecution has, inspite of minor discrepancy in the evidence of P.W.1 Shankar and evidence of other witnesses, satisfactorily proved that the present appellants and one of the absconding accused had been to the spot of incident with intention to commit robbery and for that purpose, they had tied the metal wire to the two trees on the opposite side of the road and as soon as they found the motorcycles coming near the spot, one of them pulled the wire and it came up. This was an attempt to make the persons on the motorcycles fall down so that they could be robbed. The evidence on record reveals that as soon as the motorcycles stopped near the wire, the accused persons started approaching them, naturally with intention to rob them but immediately they were apprehended by the police constables. The act of the accused could not be for any purpose other than committing robbery. It is not that they had made mere preparation for that

purpose, but they actually made attempt by pulling the wire and then proceeding towards the persons when the motorcycles were stopped. This amounts to an attempt to commit robbery. While making such attempt, both of them were armed with sharp and cutting weapon called "Gupti". These are the deadly weapons. Therefore, I find that the prosecution has proved that the accused persons had attempted to commit robbery and as they were also armed with deadly weapons at that time, they are liable to be convicted and sentenced under Section 393 read with Section 398 of I.P.C. The learned trial Court accordingly convicted them and awarded sentence of R.I. for seven years which is the minimum sentence prescribed under Section 398 of I.P.C. No fault can be found in the impugned order of conviction and sentence.

13. In the result, both the Appeals stand dismissed.

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(J.H.BHATIA,J.)